

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on August 2, 2010. No fees are due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3714652-00505 on the account statement.

Claims 1-22 are pending in the application. In the Office Action, the drawings are objected under 37 CFR 1.83(a). In the Office Action, Claim 10 is rejected under 35 U.S.C. §112. Claims 1-5, 7, 8, 12-15 and 17-21 are rejected under 35 U.S.C. §102. Claims 6, 9-11, 16 and 22 are rejected under 35 U.S.C. §103. In response, Claims 1-22 have been amended. The amendments do not add new matter and are supported in the specification at, for example, page 3, lines 26-27; page 6, lines 5-11. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, the Patent Office objects to the drawings under 37 CFR 1.83(a) and asserts that "the one pair of strips located on an internal wall surface and another pair on an external wall surface (claim 10) must be shown or the feature(s) canceled from the claim(s)." See, Office Action, page 2, lines 3-7. In response, Applicants respectfully submit that Figures 2-3 clearly illustrate a pair of strips on internal wall surfaces and a pair of strips on an external wall surface, respectively. Further, 37 CFR 1.83(a) merely states that "[t]he drawing in a nonprovisional application must show every feature of the invention specified in the claims." Indeed, neither the Manual for Patent Examining Procedures, nor the Code of Federal Regulations require that each element of the claims must be illustrated in one single embodiment, so long as the elements are included in the Figures. Indeed, such a requirement to include every variation of every possible embodiment would be highly burdensome for both patent applicants and the Patent Office alike. Instead, the purpose of the drawings are to aid in understanding the scope of the claimed invention and Applicants submit that the present drawings fully comply with the requirements under 37 CFR 1.83(a) because each and every element of Claim 10 is represented by at least Figures 2-3.

Accordingly, Applicants respectfully request that the objection to the drawings be reconsidered and withdrawn.

In the Office Action, Claim 10 is rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Patent Office asserts that “[t]he specification fails to provide an adequate written description of [a] pair of strips located on an internal wall surface and another pair on an external wall surface.” See, Office Action, page 3, lines 14-20. Applicants respectfully disagree and submit that the specification expressly states that, in an embodiment, “one pair of strips is located on an inner wall surface and the other on an outer wall surface.” See, specification, page 3, lines 18-24. The specification further states that, in an embodiment, “one strip in each pair is located on an inner surface and the other strip is located on an outer surface of each wall.” See, specification, page 3, lines 18-24. It is also expressly stated in the specification that “[t]he barrier strips may be applied to the inner or outer surfaces of the container and in any combination” and that “one pair may be applied to an inner surface and the other to the outer surface of the opposing wall. In an embodiment, one strip in each pair may be applied to an outer surface while its partner may be applied to the inner surface of the same wall.” See, specification, page 5, lines 15-25. As such, Applicants do not understand how the Patent Office is able to assert that a container having a pair of strips located on an internal wall surface and another pair on an external wall surface is not fully supported by the written description of the specification. Instead, Applicants respectfully submit that Claim 10 fully complies with the requirements under 35 U.S.C. 35 U.S.C. §112, first paragraph.

Accordingly, Applicants respectfully request that the rejection of Claim 10 under 35 U.S.C. 35 U.S.C. §112, first paragraph be reconsidered and withdrawn.

In the Office Action, Claims 1-5, 7, 8, 12-15 and 17-21 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by German Patent No. 26 09 520 to Kimura (“*Kimura*”). Applicants respectfully submit that *Kimura* is deficient with respect to the present claims.

Currently amended independent Claims 1, 17-18 and 20 are directed, in part, to containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns. The amendments do not add new matter and are supported in the specification at, for example, page 3, lines 26-27; page 6, lines 5-11. The containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. By setting limits to the area available for tearing and defining such area

entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See, specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is reduced. See, specification, page 5, lines 7-13. Applicants respectfully submit that *Kimura* fails to disclose or suggest each and every element of the present claims.

Kimura fails to disclose or suggest containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns as required, in part, by independent Claims 1, 17-18 and 20. Instead, *Kimura* is entirely directed to packages having a package body, a sticker attached to the package body and defining a tear line for opening an end of the package. See, *Kimura*, English Abstract. *Kimura* fails to disclose or suggest any thicknesses of the stickers at any place in the disclosure.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Kimura* fails to disclose or suggest containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns, as required, in part, by currently amended independent Claims 1, 17-18 and 20, *Kimura* fails to anticipate the present claims.

Accordingly, Applicant respectfully requests that the anticipation rejections with respect to Claims 1-5, 7, 8, 12-15 and 17-20 in view of *Kimura* be reconsidered and the rejections be withdrawn.

In the Office Action, Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura*. Claims 9, 11 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and French Patent No. 2 832 698 to Jammet et al. (“*Jammet*”). Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura* and U.S. Patent No. 5,186,543 to

Cochran ("*Cochran*"). Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kimura*. Applicants respectfully submit that the cited references are deficient with respect to the present claims.

As discussed above, currently amended independent Claims 1, 17-18 and 20 are directed, in part, to containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns. The amendments do not add new matter and are supported in the specification at, for example, page 3, lines 26-27; page 6, lines 5-11. The containers of the present claims are of simple construction yet have means of preventing propagation of an initial tear in an undesired direction or area. By setting limits to the area available for tearing and defining such area entirely within a wall of the container, the problem of the tear propagating off the top edge of the container, leaving the mouth not completely opened, is avoided. See, specification, page 2, lines 14-21. Further, by limiting the propagation of the opening tear to a defined path, a cleaner open may be obtained and the likelihood of spillage, waste and messing is reduced. See, specification, page 5, lines 7-13. Applicants respectfully submit that the cited references fail to disclose or suggest each and every element of the present claims.

Kimura, *Jammet* and *Cochran* fail to disclose or suggest containers having at least one pair of tear-limiting strips that have a thickness from about 20 to about 50 microns as required, in part, by independent Claims 1, 17-18 and 20. Instead, *Kimura* is entirely directed to packages having a package body, a sticker attached to the package body and defining a tear line for opening an end of the package. See, *Kimura*, English Abstract. *Jammet* is entirely directed to a container having two lateral walls, a bottom and a filling orifice capable of being closed after the container has been filled with a product. The container is formed from a tearable band material and includes at least one stiffening element 50. See, *Jammet*, Claim 1; Figures 1-8. *Cochran* is entirely directed to a container having zipper elements and bag walls and guide strips for tearing the container open along tear lines. See, *Cochran*, Abstract. *Kimura*, *Jammet* and *Cochran* fail to disclose or suggest any thicknesses of strips at any place in the disclosures.

Applicants further submit that what the Patent Office has done here is to apply hindsight reasoning by attempting to selectively piece together teachings of each of the references in an attempt to recreate what the claimed invention discloses. Applicants respectfully submit that if it is proper for the Patent Office to combine any number of references to arrive at the present

claims simply because each reference suggests an element of the present claims, then every invention would effectively be rendered obvious. Instead, the skilled artisan must have a reason to combine the cited references to arrive at the present claims. Applicants respectfully submit that such a reason is not present in the instant case.

For the reasons discussed above, the cited references do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious.

Accordingly, Applicants respectfully request that the obviousness rejection of Claims 6, 9-11, 16 and 20 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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